IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.2528 OF 2006
IN
SUIT NO.1492 OF 1987

Mukut Co.op.Hsg.Socy. Ltd.
& Ors. .. Plaintiffs.

V/s.

M.M.Bhatt (H.U.F.) & Ors. .. Defendants

Shri.P.G.Ganwani i/b. Soloman & Co. for the plaintiffs.

Shri.A.G.Shah for defendant Nos.1 to 4.

CORAM : Dr.D.Y.CHANDRACHUD, J.
DATED : 23rd November, 2006.

P.C.

The Notice of Motion has taken up by consent since the suit is placed for hearing today. This Motion has been taken up on the part of defendant Nos.1 to 4 for condoning the delay in filing the Written Statement and for taking the Written statement on record. On 13/07/2006, an order was passed by D.G.Karnik, J noting that the defendants have not filed the Written Statement and directed that the suit shall proceed against the defendants without their Written Statement. The Court

directed that considering the nature of the suit, it is not appropriate to pass a decree under Order 8 Rule 10 of the C.P.C. without evidence. The plaintiff was accordingly permitted to file an affidavit of its witness/witnesses in lieu of the examination-in-chief together with the compilation of original documents. That order is annexed at Exh.6 to the Notice of Motion. It appears that inadvertently another order was passed on 13/07/2006 (Exh.4 to the affidavit in support) by which the suit came to be decreed. Ordinarily it would have been appropriate if the application for recall of the order decreeing the suit was made before the same learned Judge. However, at the hearing of the Notice of Motion, both the learned counsel appearing for the plaintiffs and defendant Nos. 1 to 4 are agreed in stating before the Court that on 13/07/2006, the Court had directed that the suit shall proceed without want of Written Statement and hence the second order on the same day which decreed the suit is an obvious and inadvertent error. The learned counsel appearing on behalf of the plaintiffs has no objection to the relief which has been sought in the Notice of

Motion. The Motion is accordingly made absolute in terms of prayer clauses (a) & (b). The Written Statement is taken on record.

(Dr.D.Y.CHANDRACHUD, J.)